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11 **UNITED STATES DISTRICT COURT**
 12 **NORTHERN DISTRICT OF CALIFORNIA**

13 ABANTE ROOTER AND PLUMBING) Case No.
 14 INC, individually and on behalf of all)
 15 others similarly situated,) **CLASS ACTION**
 16 Plaintiff,)
 17 vs.) **COMPLAINT FOR VIOLATIONS**
 18 PACIFIC PRO'S INSURANCE) **OF:**
 19 AGENCY and DOES 1 through 10,) 1. NEGLIGENT VIOLATIONS
 20 inclusive,) OF THE TELEPHONE
 21 Defendants.) CONSUMER PROTECTION
 22) ACT [47 U.S.C. §227(b)]
 23) 2. WILLFUL VIOLATIONS
 24) OF THE TELEPHONE
 25) CONSUMER PROTECTION
 26) ACT [47 U.S.C. §227(b)]
 27)
 28)
 29)
 30)

31 Plaintiff ABANTE ROOTER AND PLUMBING INC ("Plaintiff"),
 32 individually and on behalf of all others similarly situated, alleges the following
 33 upon information and belief based upon personal knowledge:
 34

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of PACIFIC PRO'S INSURANCE AGENCY ("Defendant"), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.* ("TCPA") and related regulations.

JURISDICTION & VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a California corporation with its principle place of business also in California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendants, a company incorporated and based in California. Plaintiff also seeks up to \$1,500.00 in damages for each call; in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendants do business within the State of California and Plaintiff resides within the County of Alameda.

PARTIES

4. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff”), is a rooting and plumbing business in Emeryville, California and is a “person” as defined by *47 U.S.C. § 153 (39)*.

5. Defendant PACIFIC PRO'S INSURANCE AGENCY, is an insurance agency incorporated and based in California and is a "person" as defined by 47 U.S.C. § 153 (39).

6. The above-named Defendants, and their subsidiaries and agents, are collectively referred to as "Defendants." The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, each and every Defendants were acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

8. On or around August 25, 2017, Defendants contacted Plaintiff on Plaintiff's cellular telephone numbers ending in -1636 to solicit Plaintiff to purchase Defendants' services.

9. Thereafter, Defendant contacted Plaintiff on numerous occasions to solicit Plaintiff to purchase Defendants' services.

10. Defendants used an “automatic telephone dialing system” as defined by *47 U.S.C. § 227(a)(1)* to place calls to Plaintiff seeking to solicit its services.

11. Defendants contacted or attempted to contact Plaintiff from telephone number (714) 111-2223 belonging to Defendants

12. Defendants' calls constituted calls that were not for emergency purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

13. Defendants' calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls

pursuant to 47 U.S.C. § 227(b)(1).

14. During all relevant times, Defendants did not possess Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on its cellular telephones pursuant to *47 U.S.C. § 227(b)(1)(A)*.

15. Defendants placed multiple calls soliciting its business to Plaintiff on its cellular telephones beginning in or around August 2017.

16. Such calls constitute solicitation calls pursuant to 47 C.F.R. § 64.1200(c)(2) as they were attempts to promote or sell Defendants' services.

17. Plaintiff received numerous solicitation calls from Defendants within a 12-month period.

18. Plaintiff never granted Defendants any prior express consent nor was any established business relationship with Defendants in existence as defined under 16 C.F.R. 310.4(b)(1)(iii)(B).

19. Upon information and belief and based on Plaintiff's experiences of being called by Defendants after requesting they stop calling, and at all relevant times, Defendants failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c)(5).

CLASS ALLEGATIONS

20. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the four proposed classes (hereafter, jointly, "The Classes"). The class concerning the ATDS claim for no prior express consent (hereafter "The ATDS Class") is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendants to said person's cellular telephone made

1 through the use of any automatic telephone dialing
2 system or an artificial or prerecorded voice and such
3 person had not previously consented to receiving such
4 calls within the four years prior to the filing of this
Complaint.

5 **FIRST CAUSE OF ACTION**

6 **Negligent Violations of the Telephone Consumer Protection Act**

7 **47 U.S.C. §227(b).**

8 21. Plaintiff repeats and incorporates by reference into this cause of action
9 the allegations set forth in the paragraphs above.

10 22. The foregoing acts and omissions of Defendants constitute numerous
11 and multiple negligent violations of the TCPA, including but not limited to each
12 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
13 *47 U.S.C. § 227 (b)(1)(A)*.

14 23. As a result of Defendants' negligent violations of *47 U.S.C. § 227(b)*,
15 Plaintiff and the Class Members are entitled an award of \$500.00 in statutory
16 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

17 24. Plaintiff and the ATDS Class are also entitled to and seek injunctive
18 relief prohibiting such conduct in the future.

20 **SECOND CAUSE OF ACTION**

21 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

22 **Act**

23 **47 U.S.C. §227(b)**

24 **On Behalf of the ATDS Class**

25 25. Plaintiff repeats and incorporates by reference into this cause of action
26 the allegations set forth in the paragraphs above.

27 26. The foregoing acts and omissions of Defendants constitute numerous
28 and multiple knowing and/or willful violations of the TCPA, including but not

limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

27. As a result of Defendants' knowing and/or willful violations of 47 U.S.C. § 227(b), Plaintiff and the ATDS Class are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

28. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendants for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendants' negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection

Act

47 U.S.C. §227(b)

- As a result of Defendants' willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).

1 • Any and all other relief that the Court deems just and proper.

2 **JURY DEMAND**

3 29. Pursuant to the Seventh Amendment to the Constitution of the United
4 States of America, Plaintiff is entitled to, and demands, a trial by jury.

5 Respectfully submitted this 3rd day of August, 2020.

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7 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

8

9 By: /s/ Todd M. Friedman
10 Todd M. Friedman
11 Law Offices of Todd M. Friedman
12 Attorney for Plaintiff